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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,474	12/28/2004	Mami Nonomura	263421US0PCT	2696

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EXAMINER	
WHITE, EVERETT NMN	

ART UNIT	PAPER NUMBER
1623	

NOTIFICATION DATE	DELIVERY MODE
05/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/519,474	NONOMURA ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9 and 12-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 12-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed March 18, 2008 has been received, entered and carefully considered. The amendment affects the instant application accordingly:

(A) Claims 10 and 11 were previously canceled;
(B) Claims 7, 8, 16 and 17 have been amended;
(C) Comments regarding the Office Action have been provided drawn to:
  (I) 102(b) rejection, which has been maintained for the reasons of record;
  (II) 103(a) rejections, which have been maintained for the reasons of record.

2. Claims 1-9 and 12-21 are pending in the case.

Claim Rejections - 35 USC § 112

New Ground of Rejection

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7, 8, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 8, 16 and 17, which are drawn to a mask or a sheet, are vague and indefinite with regard to comprising an allergen inactivating agent, since the claims do not disclose the relationship between the mask or sheet and the allergen inactivating agent. Is the allergen inactivating agent attached to the mask or sheet and, if so, where on the mask or sheet? That is, is the agent attached to the front or back of the mask or sheet, or is the agent part of a layer with the mask or sheet? The nexus between the mask or sheet and the allergen inactivating agent has not been clearly established.

5. Applicant's arguments with respect to Claims 7, 8, 16 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 9, 12-14 and 18-21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Nagasawa et al (WO 00/73351 A1) for the reasons disclosed in the Office actions filed August 16, 2007 and reasons argued in the Office Action filed April 21, 2008.

8. Applicant's arguments filed September 22, 2008 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the Nagasawa et al reference does not describe selecting a cellulose ether as a backbone for polysaccharide derivatives, wherein the cellulose ether has an average molecular weight of 100,000 to 600,000 or 100,000 to 200,000. The argument is not persuasive since the Nagasawa et al references clearly establish that the polysaccharide thereof may be selected as cellulose ether which has an average molecular weight within the instantly claimed range. For example, see the English Language equivalent, US Pat. 6,541,614, in column 5, line 13, which disclose hydroxyethylcellulose as being particularly preferred. Also, see column 5, lines 22-25 of US Pat. 6,541,614, wherein weight average molecular weight of the polysaccharide or its derivatives is more preferably from 100,000 to 5,000,000, which clearly cover the average molecular weight range recited in the instant claims.

Applicants argue that Nagasawa et al do not make the claimed agent obvious because the allergen inactivating effect of the Nagasawa polysaccharides would not have been expected. This argument is also not persuasive since the polysaccharide derivatives specified in the instant claims are identical to the polysaccharide derivatives disclosed in the Nagasawa et al references when the polysaccharide is selected as cellulose. Applicants are reminded that products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties

are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada* 15 USPQ 2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01

Accordingly, the rejection of Claims 1-6, 9, 12-14 and 18-21 under 35 U.S.C. 102(b) as being anticipated by the Nagasawa et al reference is maintained for the reasons of record.

Claim Rejections - 35 USC § 103

9. Claims 1- 5, 8, 9, 12-14 and 17-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al (WO 00/73351 A1) in view of Golz-Berner et al (US Patent No. 6,245,342) for the reasons disclosed on pages 4-6 of the Office Action filed December 22, 2008.

10. Applicant's arguments filed March 18, 2009 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that polysaccharides having the claimed ranges of molecular weight advantageously provide the allergen inactivating effect that is quite different from the thickening effect of the Nagasawa et al patent. This argument is not persuasive since the Nagasawa et al publications discloses similar polysaccharides compounds that covers the molecular weight range disclosed in the instant claims. Applicants are reminded that products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada* 15 USPQ 2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01. The Golz-Berner et al patent us only cited to show that the present of hydroxyethylcellulose, a cellulose ether, in a cosmetic product is known in the art. Accordingly, the rejection of Claims 1- 5, 8, 9, 12-14 and 17-21 under 35 U.S.C. 103(a) as being unpatentable over the Nagasawa et al publication in view of Golz-Berner et al patent is maintained for the reasons of record.

11. Claims 1-6, 9, 12-15 and 18-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al (WO 00/73351 A1) in view of Palinczar (US Patent No. 4,671,955) for the reasons disclosed on pages 6-8 of the Office Action filed April 21, 2008.

12. Applicant's arguments filed September 22, 2008 have been fully considered but they are not persuasive. Applicants argue against rejection on the ground that Nagasawa et al and Palinczar do not make the claimed agent obvious because the allergen inactivating effect of the Nagasawa polysaccharides would not have been expected. Applicants argue that the polysaccharides having the claimed ranges of molecular weight advantageously provide the allergen inactivating effect that is quite different from the thickening effect of Nagasawa. This argument is not persuasive because one would be motivated to combine the teaching of the Nagasawa et al publication with the teaching of the Palinczar patent since both references disclose hydroxyethyl cellulose as a component of cosmetic products. The Nagasawa et al publication discloses an average molecular weight range that covers the average molecular weight range recited in the instant claims. Accordingly, the rejection of Claims 1-6, 9, 12-15 and 18-21 under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al publication in view of Palinczar patent is maintained for the reasons of record.

Reference Cited Showing the State of the Art

13. Berlind (US Patent No. 3,137,006), which discloses folded sheet material as facial mask which can be attached to the ear, is cited to show that a mask or sheet comprising ear hangers is know in the art.

Summary

14. All the pending claims (Claims 1-9 and 12-21) are rejected.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is 571-272-0660. The examiner can normally be reached on 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Everett White/
Examiner, Art Unit 1623

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623